

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**DEAN HARCROW**

Claimant

VS.

**CITY OF HUTCHINSON**

Respondent,  
Self-Insured

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Docket No. 248,905

**ORDER**

The respondent appealed the January 7, 2000 preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

**ISSUES**

This is a claim for a July 25, 1997 accident and each and every day worked after that date. On July 25, 1997, claimant was injured when his police cruiser and a pickup collided. The claimant alleges that, in addition to other injuries, he developed a hernia in his upper abdomen as a direct result of that accident. At the preliminary hearing, claimant requested the Judge to find that the hernia was caused by the accident or, in the alternative, that \$468 of the medical expense related to the hernia be ordered "paid under the unauthorized medical provision . . . as a disputed injury related to the automobile accident."

Judge Moore ordered the medical expense incurred for the hernia repair to be paid as unauthorized medical benefits. The respondent contends the Judge erred as claimant failed to prove the hernia was related to the 1997 accident. Conversely, the claimant argues that the hernia was caused by the July 1997 accident and that all the medical expenses related to the hernia should be ordered paid as authorized medical benefits. In the alternative, the claimant argues that the Order should be affirmed.

The only issue before the Appeals Board on this appeal is whether the Judge erred in ordering the payment of the medical expense incurred for the hernia as unauthorized medical benefits.

**FINDINGS OF FACT**

After reviewing the record compiled to date, the Appeals Board finds:

1. On July 25, 1997, Mr. Dean Harcrow sustained serious injuries when his police cruiser and a pickup collided. The parties stipulated that the accident arose out of and in the course of employment with the City of Hutchinson.

2. As a result of the accident, Officer Harcrow received several lacerations to his head that required 48 stitches. Although the air bag deployed, Officer Harcrow struck the steering wheel with his upper body. When he was taken to the hospital emergency room, Officer Harcrow testified that he complained of head, neck, ankle, lower back, and abdominal pains. The emergency room records indicate that his abdomen was examined and that it was non-tender. But those same records also indicate that Officer Harcrow complained of his chest and stomach when he arose for X-rays.

3. In either late 1997 or early 1998, Officer Harcrow began developing a lump in his stomach. When the lump grew larger and began to hurt, Officer Harcrow consulted with his family physician, Dr. Dana Richman, who diagnosed a hernia and referred him to Dr. Joseph E. McMullen for treatment.

4. In March of 1999, Dr. McMullen diagnosed and repaired an epigastric hernia that he believes possibly developed as a result of the July 1997 accident. In a November 10, 1999 letter, the doctor wrote:

Mr. Harcrow was involved in an automobile accident on July 25, 1997, and could have possibly developed an epigastric hernia at the time of this accident. He was seen in the office in March of 1999, and an incarcerated epigastric hernia was repaired. As far as I know, he is recovering nicely from this procedure and has been discharged.

5. The City of Hutchinson denied payment of the medical expenses incurred for the hernia on the basis that the hernia was not related to the July 1997 accident. Officer Harcrow then turned the bills in to his health insurance carrier, which paid the expenses for the hernia except for approximately \$468.

**CONCLUSIONS OF LAW**

1. The preliminary hearing Order should be modified as the City of Hutchinson is not required, at this time, to pay the medical bills related to the hernia as unauthorized medical benefits.

2. The Judge stated at the conclusion of the preliminary hearing that the evidence did not establish that the hernia was related to the July 1997 accident. At the conclusion of the January 6, 2000 preliminary hearing, the Judge stated:

. . . and the doctor's opinion that it [the hernia] might possibly be related just doesn't cut the mustard. It's got to be by a preponderance of the credible evidence, and might possibly doesn't make that grade.

The Appeals Board agrees with that conclusion.

3. Although the Judge found that the evidence did not prove a relationship between the hernia and the July 1997 accident, the Judge ordered payment of the hernia bills as unauthorized medical benefits. The Judge stated:

I've reviewed 44-510 relating to unauthorized medical. That's under Subsection (c) (2). And it does not limit the use of that medical to admitted components of the compensable injury. It says: "Without application or approval, an employee may consult a health care provider of the employee's choice for the purposes of examination, diagnosis or treatment but the employer shall only be liable for the fees and charges of such health care provider up to a total of five hundred dollars." **There's nothing in there that would appear to limit your right to apply that to what you contend to be a compensable component of the accident but which is disputed by respondent**, so the unauthorized medical allowance may be expended for treatment associated with the hernia repair but that's going to be unauthorized, it's not going to be authorized. (Emphasis added.)

The Appeals Board disagrees with that analysis of the law and that conclusion. Although there may be situations where a non-work-related condition must be treated in conjunction with a work-related injury thereby making those bills payable as part of the workers compensation claim, generally the Workers Compensation Act only requires the payment of benefits for those conditions and injuries that are related to the work-related accident or occupational disease.

4. Because Officer Harcrow has failed to prove that it is more probably true than not that the hernia was related to the July 1997 accident or that the hernia was treated in conjunction with some other injury that resulted from the accident, the request for payment of those medical expenses as either authorized or unauthorized medical benefits should be denied.

5. As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>1</sup>

6. The parties are reminded to limit their medical record exhibits to those documents that are relevant and material to the issues.

**WHEREFORE**, the Appeals Board modifies the January 7, 2000 preliminary hearing Order and strikes that part of the Order that requires the City of Hutchinson to pay the medical expenses of the hernia.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2000.

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BOARD MEMBER

c: Andrew L. Oswald, Hutchinson, KS  
Thomas A. Dower, Hutchinson, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director

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<sup>1</sup> K.S.A. 1999 Supp. 44-534a(a)(2).